

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

PHILLIP EUGENE EVANS, #342475

Petitioner,

v.

2:08CV492

GENE M. JOHNSON, Director of the
Virginia Department of Corrections,

Respondent.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter was initiated by petition for writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to the undersigned United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia.

I. STATEMENT OF THE CASE

On October 15, 2008, petitioner filed a petition for writ of habeas corpus in this Court. The petition alleges violation of federal rights pertaining to the loss of "sentence credits" due to petitioner's failure to participate in a "Therapeutic Community Program." Petitioner is in custody in the Tazewell Correctional Unit as a result of his convictions on December 14, 2004; January 10, 2005; and January 26, 2005, in the Circuit Courts of Henrico and Chesterfield Counties. Petitioner did not file an application to proceed in forma pauperis nor submit the required \$5.00 filing fee with his petition.

By Order of October 20, 2008, petitioner was directed to either remit the filing fee or to complete and submit to the Clerk of this court an "Affidavit in Support of Request to Proceed in Forma

Pauperis," within thirty days from the date of the Order. Petitioner was advised that if he failed to comply with the Order, his petition would be submitted to a District Judge for dismissal.

By Order of November 25, 2008, after petitioner's time to comply with the above-mentioned Order had expired, the Court extended petitioner's time within which to submit the filing fee or the application to proceed in forma pauperis. To date, petitioner has not complied with the Court's Orders, and time to do so has expired.

II. RECOMMENDATION

Because petitioner has failed to comply with the Court's Orders of October 20, 2008, and November 25, 2008, directing him to either pay the required filing fee or to submit an application to proceed in forma pauperis, the Court recommends that petitioner's petition for writ of habeas corpus be DISMISSED without prejudice to the petitioner's right to present his claims at a later date.

III. REVIEW PROCEDURE

By copy of this Report and Recommendation, petitioner is notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within ten days from the date of mailing of this report to the objecting party, computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure, plus three days permitted by Rule 6(e) of said rules. See 28 U.S.C. § 636(b)(1)(C)(2000); FED.R.CIV.P. 72(b). A party may respond to another party's objections within ten days after being served with a copy thereof.

2. A district judge shall make a de novo determination of those portions of this report or specified findings or recommendations to which objection is made.

The parties are further notified that failure to file timely objections to the findings and recommendations set forth above will result in waiver of right to appeal from a judgment of this court based on such findings and recommendations. See Thomas v. Arn, 474 U.S. 140 (1985); Carr v. Hutto, 737 F.2d 433 (4th Cir. 1984); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

/s/

James E. Bradberry
United States Magistrate Judge

Norfolk, Virginia

December 18, 2008

Clerk's Mailing Certificate

A copy of the foregoing Report was mailed this date to each of the following:

Phillip Eugene Evans, #342475, pro se
Tazewell Correctional Unit #31
1245 Clearfork Rd.
Tazewell, VA 24651-9720

Fernando Galindo, Clerk

By _____
Deputy Clerk

_____, 2008